

DEPARTMENT OF LABOR AND ECONOMIC GROWTH
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
STATE RETIREMENT BOARD - GENERAL HEARING RULES

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the State Office of Administrative Hearings and Rules by Executive Order 2005-1, MCL 445.2021.)

R 38.71, R 38.72, R 38.73, R 38.74, R 38.75, R 38.76, R 38.77, R 38.78, R 38.79, R 38.80, R 38.81, R 38.82, R 38.83, R 38.84, R 38.85, and R 38.86 are added to the Michigan Administrative Code, and R 38.1, R 38.2, R 38.3, R 38.4, R 38.5, R 38.6 and R 38.7 of the Code are rescinded as follows:

R 38.1 Notice of hearing. Rescinded.

~~Rule 1. Notification of any hearing before the state employees' retirement board will be by registered mail, and will state the date, time, place, issues involved, and reasons for holding said hearing. Such notice will be mailed at least 10 days prior to said hearing. Unless indicated otherwise, all hearings will be held in the offices of the state employees' retirement board.~~

R 38.2 Appearance. Rescinded.

~~Rule 2. When an appearance is made at a hearing, it shall be made either in person or by a duly authorized representative, or by counsel.~~

R 38.3 Written answer; oral statement on charges; service of briefs or arguments. Rescinded.

~~Rule 3. The person or persons who have been served with a notice of hearing may, at his option, file a written answer thereto prior to the date set for hearing, or at said hearing may appear and present an oral statement on the charges contained in the notice of hearing. When written briefs or arguments are presented, a copy shall be served upon the opposite parties or their attorneys at least 10 days prior to the date set for the hearing.~~

R 38.4 Failure to appear. Rescinded.

~~Rule 4. If the person or persons who have been previously served with a notice of hearing fail to appear at a noticed hearing, the state employees' retirement board, may proceed with a hearing of the cases brought before him and may, on the evidence presented, make his decision.~~

R 38.5 Statement of facts. Rescinded.

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~~Rule 5. When a hearing is requested, the party requesting the hearing shall submit in writing a fair and accurate statement of the facts to the state employees' retirement board and all interested parties. The facts shall be accepted as evidence unless a written answer is filed denying said facts and stating new facts relied upon with the state employees' retirement board and all interested parties.~~

R 38.6 Adjournment or continuance of hearing. Rescinded.

~~Rule 6. No hearing shall be adjourned or continued, except upon an order of the state employees' retirement board or the department employee conducting the hearing. All motions and requests for an adjournment, or a continuance, shall be in writing, which instrument shall state concisely the reasons why an adjournment or continuance is necessary. No motion or request for an adjournment or continuance will be considered unless the same is filed with the state employees' retirement board at least 5 days prior to the date assigned for the hearing of the application, complaint or petition, except upon order of the executive secretary of the retirement board which exception will be granted only upon a showing that for reasons not within the control of the person or party making the motion or request, the motion or request could not be filed within the time limited.~~

R 38.7 Stipulations. Rescinded.

~~Rule 7. The parties to any hearing before the state employees' retirement board may, by a stipulation in writing, filed with the state employees' retirement board, agree upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence on the hearing. Parties are requested to thus agree upon the facts whenever practicable.~~

PART I. PROCEDURAL RULES

R 38.71 Applicability.

Rule 71. (1) These rules apply to hearings held under the jurisdiction of the State Employees' Retirement Board.

(2) The terms defined in 1943 PA 240, MCL 38.1 et seq; 1969 PA 306, MCL 24.201 et seq; and R 38.21(1) have the same meaning when used in these rules.

R 38.72 Notice of hearing.

Rule 72. Notification of any hearing shall state the date, time, place, and issues involved. Notice shall be mailed by first-class mail at least 35 days before the hearing.

R 38.73 Appearance.

Rule 73. (1) If a party is represented by an attorney, the attorney shall file a written appearance.

(2) An appearance made at a hearing shall be made in person either by the individual who requested the hearing or by legal counsel.

R 38.74 Filing of documents.

Rule 74. If a document is not filed and served within the time limits established by these rules, the presiding officer or the board shall strike the document unless the individual

serving the document establishes good cause as to why the document was not filed and served timely.

R 38.75 Service.

Rule 75. (1) A party shall serve all documents filed in a contested case on all other parties and the presiding officer. Service shall be made in person or by first-class mail with postage fully paid and addressed to the individual to be served at the individual's last known address.

(2) The date of service shall be the date of personal service or the date that the document is placed in first-class mail.

(3) A party who files a document in a contested case hearing shall file a proof of service that establishes the document was simultaneously and properly served on all other parties.

R 38.76 Pre-hearing conference; scope.

Rule 76. (1) If a presiding officer determines that a pre-hearing conference will aid in the efficient resolution of the contested case, then the presiding officer may direct the parties or their attorneys to participate in a pre-hearing conference, either in person or by telephone, to do any of the following:

- (a)** State and simplify the factual and legal issues involved.
- (b)** Consider motions to be disposed of before hearing and other preliminary matters.
- (c)** Identify proposed documentary evidence and determine its authenticity, if possible.
- (d)** Estimate the time for hearing.
- (e)** Consider other matters that may aid in the resolution of the contested case.

(2) The presiding officer may provide a written summary of the items discussed to each party after the pre-hearing conference.

(3) At a pre-hearing conference, the presiding officer may direct the parties to file a hearing brief as to any of the issues involved in the action. If the parties are directed to submit hearing briefs, then the parties shall submit briefs to the presiding officer not less than 10 days before the hearing, unless a different date is set by the presiding officer.

R 38.77 Presiding officer.

Rule 77. (1) The State Office of Administrative Hearings and Rules shall designate presiding officers in contested case proceedings.

(2) A presiding officer shall issue orders that are necessary for the fair and efficient determination of the issues presented. These include, but are not limited to, an order in response to a motion to do any of the following:

- (a)** Extend the time to file a closing argument.
 - (b)** Extend the time to file exceptions and/or replies.
 - (c)** Adjourn a hearing.
- (3)** A party shall comply with an order of a presiding officer

(4) Neither the presiding officer nor any attorney in a contested case may issue a subpoena.

R 38.78 Adjournment or continuance of hearing.

Rule 78. A hearing shall not be adjourned or continued except upon an order of the presiding officer. Unless made during a hearing, all motions and requests for an adjournment, or a continuance, shall be filed in writing and state concisely the reasons why an adjournment or continuance is necessary.

R 38.79 Hearing record.

Rule 79. A verbatim record shall be made of each hearing held. Upon request, a party may order a transcript. The requestor shall pay the cost of the transcript.

R 38.80 Form; time for filing motion.

Rule 80. (1) A request to the presiding officer for an order in a pending action shall be by motion, in writing, unless made during a hearing. The request shall state the relief or order sought, the grounds and authority on which the request is based, and be signed by the party or the party's attorney.

(2) A copy of the written motion and brief, if any, shall be served in accordance with R 38.75(1). If a motion or response is supported by affidavit, then the affidavit shall be filed and served with the motion or response.

(3) A party opposing a motion shall serve a response and any brief and supporting affidavit or affidavits within 14 days after service of the motion unless otherwise ordered by the presiding officer.

(4) The presiding officer may limit or dispense with oral arguments on motions.

R 38.81 Motion for summary disposition.

Rule 81. (1) A party may move for summary disposition on all or any part of the claim at any time. The motion shall state that the moving party is entitled to summary disposition on 1 or more of the following grounds and shall specify the grounds on which the motion is based:

(a) The petitioner has failed to state a claim upon which relief can be granted.

(b) There is no genuine issue as to a material fact, except as to the relief to be granted.

(c) The board lacks jurisdiction of the subject matter.

(d) The claim or defense is barred because it is untimely.

(e) The claim or defense is barred because of some other legal impediment or other disposition of the claim.

(2) If the motion for summary disposition is based on subrule (1)(a) of this rule, then only pleadings may be considered. A motion based on subrule (1)(b), (c), (d) or (e) of this rule shall be supported by affidavits or other documentary evidence and shall specifically identify the issues on which the moving party believes there is no genuine issue of material fact. The affidavits, together with the pleadings and documentary evidence then filed in the action, or submitted by the parties, shall be considered. If a motion is made under subrule (1)(b) of this rule and supported as

provided in this rule, then an adverse party shall, by affidavits or otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for hearing.

(3) A presiding officer shall rule on a motion for summary disposition in a proposal for decision.

R 38.82 Discovery.

Rule 82. (1) Discovery shall not be allowed in any contested case hearing conducted under the act or these rules except depositions may be taken upon written approval of the board where it is established that it is impractical or impossible to otherwise obtain the evidence. If the board approves the taking of a deposition, it shall be taken in conformity with the Michigan court rules.

(2) The petitioner shall serve a list of witnesses 20 days before the scheduled hearing date. The respondent shall serve a list of witnesses 10 days before the scheduled hearing date. A party shall not call as a witness a person who was not included on a witness list unless the presiding officer finds that the party has established good cause as to why the person was not included on the party's witness list.

R 38.83 Closing arguments.

Rule 83. The presiding officer shall notify the parties whether written or oral closing arguments shall be scheduled and the time deadlines for such arguments.

R 38.84 Proposal for decision.

Rule 84. The presiding officer shall prepare a proposal for decision within a reasonable time after the closing of the record. It shall include findings of fact, conclusions of law, and a recommended decision. The proposal for decision shall be served on each of the parties and the hearing coordinator of the retirement system.

R 38.85 Considerations of documents.

Rule 85. The presiding officer shall admit the administrative record if offered into evidence at the hearing.

R 38.86 Testimony; telephone and other electronic means.

Rule 86. A presiding officer shall not take the testimony of a witness by way of a telephone conference call or other electronic means unless all of the following occur:

(a) The party who wants to take such testimony serves a motion at least 10 days before the date of the hearing.

(b) The presiding officer concludes that it is impractical or impossible to otherwise obtain the testimony.

(c) The presiding officer concludes that the witness is not needed to appear in person so that the witness's appearance and demeanor may be observed for credibility purposes.